

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579**

IN THE MATTER OF THE CLAIM OF

MARY M. MacKAY

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No. CU-1536

Decision No. CU - 5962

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by MARY M. MacKAY in the amended amount of \$536,627.10, based upon the asserted ownership and loss of real and personal property in Cuba. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant describes her losses as follows:

House and three lots	\$37,500.00	
Fees and costs	2,362.35	
Improvements	<u>15,925.00</u>	
		\$ 55,787.35
Personalty, principally antiques		<u>480,839.75</u>
		\$536,627.10

Additionally, claimant asserted title to the following securities:

- 6,000 - Guantanamo & Western 4%
- 150 - Vertientes Camaguey Sugar
- 800 - Atlantica del Golfo Sugar
- 428 - Central Violeta

On the basis of the record, as further discussed below, the Commission finds that claimant owned certain real property at Calle 66, 1305 between 13 and 15th, Marianao, Havana, Cuba, and certain personal property therein.

The record before the Commission indicates that claimant called at the American Embassy in Havana on June 30, 1960 and stated that she was returning at that time to the United States but wished to report ownership of a residence at Calle 66, No. 130, filled with antiques, valuing the house at \$50,000.00 and contents at \$75,000.00.

Claimant has stated that she returned to the United States in December, 1960, but in August, 1961, she received word that if she did not return by September 15, 1961, her property would be confiscated. Accordingly, she returned to Cuba on September 1, 1961, on a passport which has been issued on March 23, 1961.

On May 13, 1965, she returned from market to find a soldier and others in her house. She was removed to the police station and then to a military hospital, and was thus incarcerated for approximately six weeks, without being apprised of charges. Thereafter she was returned to the United States. She has also stated that her former husband is buried in Havana, and that this was one of the reasons she expected to continue living in Havana.

On the basis of the foregoing the Commission finds that claimant's real and personal property in Havana was taken by the Government of Cuba on May 13, 1965, and that she thereby suffered a loss within the meaning of Title V of the Act.

Improved Real Property

The record includes a photocopy and translation of a deed showing that claimant, then a widow, purchased the property at Calle 66 in 1953. Although the deed recites a payment of 25,000 pesos, the document further clarifies that the settlement taxes in amount of \$1,332.00 were figured on a payment of \$37,000.00. Claimant has detailed the costs and fees as \$2,362.35.

The property is described as consisting of three lots measuring 1,179.66 square meters, improved by a one-floor brick building with hall, library, garage, four bedrooms, two baths, dining room, corridor, pantry, kitchen, servants' quarters, lobby, and usual appurtenances. Claimant has detailed the improvements made to the property subsequent to purchase as enclosing the terrace, construction of a chauffeur's room, enclosing the porch, walks, fencing, gates, lamps, and the like.

On the basis of this record, the Commission finds that on the date of loss the improved real property had a value of \$55,287.35, and concludes that claimant suffered a loss in that amount.

Personal Property

As stated above, on June 30, 1960, claimant reported to the American Embassy that the antiques in her house had a value of \$75,000.00.

By letter of April 6, 1966, prior to filing claim, she informed the Commission that she had in her possession an inventory of the contents of her home as of the date it was taken over by the Cuban Government, that is, May 13, 1965.

On March 21, 1967, she informed the Commission, in connection with filing claim, that she believed it impossible for her to file until she completed the inventory which she was then trying to complete in order to fill in the proper dollar amounts, but she believed she could finish the inventory by the end of March.

On April 17, 1967 the Commission received the claim form listing an item of \$400,000.00 for personalty (in addition to the realty figures). She stated that this included furniture, objects of art, personal effects such as clothing, etc. In forwarding the claim form she stated that she was still trying to complete the entire inventory.

On September 25, 1967, the Commission received her amended claim, listing a figure of \$480,839.75 for personalty. This was accompanied by 97 pages of single spaced listings and some photographs. The wide variation in figures from 1960 to 1967 was called to her attention by letter of October 13, 1967. In response, claimant submitted an announcement of an auction sale in Montreal, for January, 1967, with a supporting catalog, and an announcement of an auction sale for March, 1967, having encircled certain items in the January catalog, stating she was sure these were her property. She also stated that when she left Cuba in December, 1960, her nephew was to file an inventory of the personalty, that she does not have a copy, but that \$75,000.00 is too low.

The personal property was not insured as claimant stated she could find no company which would cover for breakage, believed to be the greatest hazard for antiques in the home.

On her claim form, she stated that she did not assert a tax loss. When queried about this she replied that she had disposed of certain stock and reported a capital loss to Internal Revenue Service. This is further discussed under "Securities", below.

The record includes a number of affidavits attesting to her collections of porcelain and other objects. All of these categorize the collections as large, but none venture an opinion as to value, as had been suggested.

Claimant was asked whether values listed are the prices paid or the values she believed applied as of the date of loss, and replied that these are the real and true values as of the date of confiscation, adding that she had been collecting since 1939.

On the basis of the foregoing record, and in the absence of evidence to substantiate the asserted valuation of \$480,839.75, the Commission finds that

on the date of loss, the personal property had a value of \$75,000.00 and concludes that claimant thus suffered a loss in that amount.

Securities

Claim had been formerly asserted, through Vertientes Camaguey Sugar Company for 150 shares of stock of that Company. This was processed under Claim No. CU-5704. A Certification of Loss was made in the amount of \$6,959.19 on October 8, 1969, and the decision became final on November 10, 1969. The decision informed claimant that no monies are available to pay such certifications; and further, notified the Treasury that no payment should be made in future until claimant establishes retention of the securities or the loss so certified.

By letters of September 5, 1970 and October 20, 1970, claimant informed the Commission that in December 1969 she had sold the aforementioned securities issued by Vertientes Sugar, Atlantica del Golfo, Guantanamo & Western RR, and Central Violeta.

Ownership of a stock interest in a foreign corporation on the date of nationalization vests in the owner two items of property, namely, an interest in the net worth of the corporation, and an interest in any claim arising from nationalization. The sale of such securities may effect transfer of either or both interests, depending upon the intention of the parties to the transaction. The burden of proving the nature of the transaction rests with the claimants.

Claimant states that she did not retain any claim against Cuba with respect to the sold securities. Therefore, the Commission concludes that when she sold these securities, she transferred all rights incident thereto. Accordingly, and for the foregoing reasons claims now based on the said securities, are denied.

Recapitulation

Claimant's losses on May 13, 1965 within the scope of Title V of the Act may be summarized as follows:

<u>Item</u>	<u>Value</u>
Improved Realty	\$ 55,287.35
Personalty	<u>75,000.00</u>
	\$130,287.35


The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

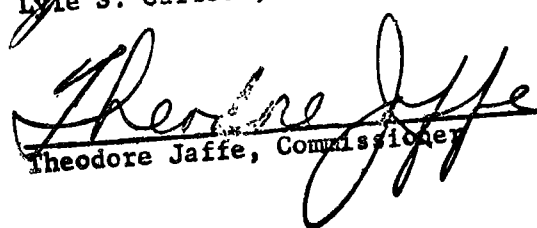
CERTIFICATION OF LOSS

The Commission certifies that MARY M. MacKAY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Thirty Thousand Two Hundred Eighty-seven Dollars and Thirty-five Cents (\$130,287.35) with interest at 6% per annum from May 13, 1965 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

NOV 17 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

CU-1536

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IN THE MATTER OF THE CLAIM OF

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Under the International Claims Settlement
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Claim No. CU-1536

Decision No. CU-5962

AMENDED PROPOSED DECISION

By Proposed Decision issued November 17, 1970, the Commission certified a loss to claimant in the amount of \$130,287.35 based upon the loss of real property and personal property including antique furnishings. Since then, claimant has submitted affidavits of antique dealers, most of whom had business dealings with claimant in Cuba but all were acquainted with her possessions. Accordingly, the Proposed Decision is hereby amended.

The Commission has considered the affidavits concerning the value of claimant's personal possessions comprising a list ninety-seven pages in length and now finds that the value of claimant's personal property which was taken by the Government of Cuba on May 13, 1965 was \$480,839.75.


Accordingly, the Certification of Loss as restated below will be entered and in all other respects the Proposed Decision is affirmed.

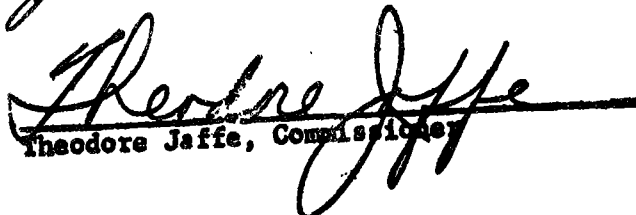
CERTIFICATION OF LOSS

The Commission certifies that MARY M. MACKAY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Five Hundred Thirty-Six Thousand One Hundred Twenty-Seven Dollars and Ten Cents (\$536,127.10) with interest thereon at 6% per annum from May 13, 1965 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Amended
Proposed Decision of the
Commission

FEB 3 1971


Lyle S. Carlock, Chairman


Theodore Jaffe, Commissioner

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NOTICE: Pursuant to the Regulations of the Commission, if no objections filed within 15 days after service or receipt of notice of this Amended Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 31.5(e) and (g), as amended (1970).)